



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

THE ADMINISTRATOR

MEMORANDUM

SUBJECT: Decision on the Small Refinery Exemption Petitions from the Sinclair Wyoming Refinery for 2018 and 2019 and the Sinclair Casper Refinery for 2019

FROM: Andrew R. Wheeler
Administrator

TO: The Sinclair Oil Corporation Small Refineries Located in Rawlins, Wyoming and Casper, Wyoming

Section 211(o)(9)(B) of the Clean Air Act (CAA or the Act) authorizes the Administrator to temporarily exempt small refineries from their renewable fuel volume obligations under the Renewable Fuel Standard ("RFS") program "for the reason of disproportionate economic hardship" ("DEH"). The Act instructs EPA, in consultation with the Department of Energy ("DOE"), to consider the DOE Small Refinery Study¹ and "other economic factors" in evaluating small refinery exemption ("SRE") petitions. The statute does not define "disproportionate economic hardship," leaving for EPA's discretion how it implements this exemption provision.²

As part of EPA's process for evaluating SRE petitions, EPA asks DOE to evaluate all the information EPA receives from each petitioner. DOE's expertise in evaluating economic conditions at U.S. refineries is fundamental to the process both DOE and EPA use to identify whether DEH exists for petitioning small refineries in the context of the RFS program. After evaluating the information submitted by the petitioner, DOE provides a recommendation to EPA on whether a small refinery merits an exemption from its RFS obligations. As described in the DOE Small Refinery Study, DOE assesses the potential for DEH at a small refinery based on two sets of metrics. One set of metrics assesses structural and economic conditions that could disproportionately impact the refinery (collectively described as "disproportionate impacts" when referencing Section 1 and Section 2 of DOE's scoring matrix). The other set of metrics assesses the financial conditions that could cause viability concerns at the refinery (described as "viability impairment" when referencing Section 3 of DOE's scoring matrix). DOE's recommendation informs EPA's decision about whether to grant or deny an SRE petition for a small refinery.

Previously, DOE and EPA considered that DEH exists only when a small refinery experiences both disproportionate impacts and viability impairment. In response to concerns that

¹ "Small Refinery Exemption Study, An Investigation into Disproportionate Economic Hardship," Office of Policy and International Affairs, U.S. Department of Energy, March 2011 (DOE Small Refinery Study).

² *Hermes Consol., LLC v. EPA*, 787 F.3d 568, 575 (D.C. Cir. 2015).

the two agencies' threshold for establishing DEH was too stringent, Congress clarified to DOE that DEH can exist if DOE finds that a small refinery is experiencing either disproportionate impacts or viability impairment. If so, Congress directed DOE to recommend a 50 percent exemption from the RFS. This was relayed in language included in an explanatory statement accompanying the 2016 Appropriations Act that stated: "If the Secretary finds that either of these two components exists, the Secretary is directed to recommend to the EPA Administrator a 50 percent waiver of RFS requirements for the petitioner."³ Congress subsequently directed EPA to follow DOE's recommendation, and to report to Congress if it did not.⁴

On December 21, 2018, the Sinclair Oil Corporation ("Sinclair") submitted a petition to EPA for an SRE for its Sinclair Wyoming Refinery ("SWR") in Rawlins, Wyoming, for the 2018 RFS compliance year. On August 9, 2019, EPA issued a memorandum deciding all the 2018 SRE petitions that the Agency had received at that time, including the SWR petition ("August 9 Memo"), consistent with DOE's recommendation to EPA. Through this memo and based on DOE's recommendation, EPA denied Sinclair's 2018 petition for the SWR. Subsequent to the August 9 Memo, Sinclair called attention to information that EPA and DOE had not considered in their original evaluations. EPA requested that DOE reconsider and rescore the SWR petition in light of the additional information. The new information changed DOE's evaluation and scoring such that DOE has recommended a 50 percent exemption for the SWR for the 2018 compliance year. Accordingly, and consistent with the August 9 Memo and DOE's revised score for the SWR, EPA is taking a new action on SWR's 2018 SRE petition to grant the requested relief in full.

On October 12, 2020, Sinclair submitted two SRE petitions for the 2019 compliance year, one for the SWR and one for the Sinclair Casper Refinery ("SCR") in Casper, Wyoming. EPA transmitted Sinclair's 2019 SRE petitions to DOE on October 13, 2020. DOE has recommended a 100 percent exemption for the SWR and SCR for the 2019 RFS compliance year.

Based on DOE's recommendation of a 50 percent exemption for the SWR 2018 SRE petition, and consistent with the August 9 memo, I am today granting a full exemption for the SWR for 2018. Based on DOE's recommendations of 100 percent exemptions for both the SWR and SCR 2019 SRE petitions, and consistent with EPA's stated approach in the 2020 RFS Rule, I am today granting full exemptions for the SWR and SCR for 2019.⁵ This decision is appropriate under the Act and is consistent with the case law recognizing EPA's independent authority in deciding whether to grant or deny SRE petitions.⁶ DOE's recommendations recognize an

³ Consolidated Appropriations Act, 2016, Pub. L. No. 114-113 (2015). The Explanatory Statement is available at: <https://rules.house.gov/bill/114/hr-2029-sa>.

⁴ Senate Report 114-281 ("When making decisions about small refinery exemptions under the RFS program, the Agency is directed to follow DOE's recommendations which are to be based on the original 2011 Small Refinery Exemption Study prepared for Congress and the conference report to division D of the Consolidated Appropriations Act of 2016. Should the Administrator disagree with a waiver recommendation from the secretary of Energy, either to approve or deny, the Agency shall provide a report to the Committee on Appropriations and to the Secretary of Energy that explains the Agency position. Such report shall be provided 10 days prior to issuing a decision on a waiver petition.").

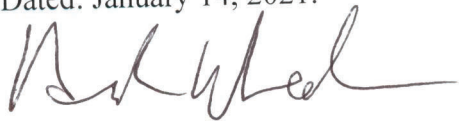
⁵ See 85 FR 7016 (February 6, 2020).

⁶ *Sinclair Wyoming Refining Co. v. EPA*, 874 F.3d 1159, 1166 (10th Cir. 2017); See also *Hermes Consol.* 787 F.3d at 574-575; *Lion Oil Co. v. EPA*, 792 F.3d 978, 982-83 (8th Cir. 2015).

economic impact on the SWR in 2018, and an economic impact and viability impairment on both Sinclair refineries in 2019, and I conclude that these represent DEH meriting relief.

In making this decision, EPA is bound by the decision of the U.S. Court of Appeals for the Tenth Circuit in *RFA et al. v. EPA*, 948 F.3d 1206 (10th Cir. 2020) (*RFA Decision*)⁷, which establishes that in order to be granted an exemption from its RFS obligations for the year in question, a small refinery such as SWR must have a continuous history of exemptions. *Id.* at 1245-46. Although SWR did not receive a small refinery exemption in 2013, this one-year lapse was the result of a negotiated settlement between Sinclair and EPA which included, in part, Sinclair choosing to withdraw its judicial challenge of EPA's denial of its SWR's 2013 petition and submitting a new SWR 2014 petition. At that time, Sinclair could not have anticipated the Tenth Circuit's *RFA Decision* that would interpret the statute to require a continuous exemption for eligibility for petitioning for SREs. Since Sinclair filed a SWR 2013 petition, successfully challenged EPA's denial of its new SWR 2014 petition and was subsequently granted relief for 2014, for equitable reasons, we believe SWR should be treated as effectively having a continuous history of exemptions from its RFS obligations.

Dated: January 14, 2021.

A handwritten signature in black ink, appearing to read "Andrew R. Wheeler", with a stylized, cursive script.

Andrew R. Wheeler
Administrator

⁷ On January 8, 2021, the Supreme Court issued a writ of *certiorari* for appeal of this decision. *HollyFrontier Cheyenne Refining, LLC v. Renewable Fuels Association*, Case No. 20-472.